

REMARKS

This paper is responsive to the Restriction requirement dated January 22, 2009. Upon entry of the forgoing amendment, claims 1, 2, 5, 6, 7, 10, 17, 18, 20-24, 26, 27, 43, 97-103, 105, 106, 108-129 and 131-132 are pending. Claims 3-4, 8-9, 11-16, 19, 25, 28-42, 44-96, 104 and 107 have been cancelled. Claims 108, 109, 111, 113, 114, 116, 117, 123-125, 129, 131 and 132 have been amended. Claim 108 has been amended to depend from claim 2, while claims 109, 111, 113, 114, 116, 117, 123-125, 129, 131 and 132 have been amended to reflect the cancellation of claim 107.

In response to the restriction requirement, Applicant elects, with traverse, the following species:

- (i) The method of claim 2. Claim 108 have been amended to depend from claim 2.
- (ii) The composition administered alone, i.e. not before, during or after one of the therapies. However, if the Examiner should find claim 2 to be allowable, then claims 97 and 123 should be allowable since a novel method can contain additional steps.
- (iii) Oral administration.
- (iv) Formulation not formulated for controlled release. However, if the Examiner should find that oral compositions are allowable, sustained and controlled release formulations should be found allowable since novel compositions can contain additional controlled or sustained release ingredients.
- (v) Solutions
- (vi) Claims 104 and 130 are cancelled, therefore this election is moot.
- (vii) The tumor species of melanoma.

Claims 1, 2, 5, 6, 7, 10, 17, 18, 20-24, 26, 27, 43, 97-103, 105, 106, 108-129 and 131-132 are generic and therefore encompass the elected species pursuant to this election of species. Applicants respectfully request that the Examiner also search the other members of each group

(i)-(vii), as these additional members will be uncovered by a search for the genus of the elected claims and therefore will not present an additional burden to the Examiner. Applicants understand that, upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. (MPEP § 809.02(a)).

Except for issue fees payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-1283. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. 1.136(a)(3).

Respectfully submitted,
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